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### Remark:

### (A) Provisional Applications:

Applicant had been asked to explain why the provisional application cited in this application in paragraph 1 do not list him as an inventor. In applicant's response dated 12/18/2006, the applicant indicated that the provisional application number 60/177,404 quoted in the first paragraph was a typo. The correct provisional application number should be 60/177,403. The priority provisional number quoted in the original declaration form was correct. This typo in the specification had been corrected in the specification amendment dated 12/18/2006.

### (B) Claim 40 rejection under 35 U.S.C. 103(a) according to Spackova in view of Runton:

Before Spackova is compared with the subject application, it is necessary to review the disclosure of Spackova:

    (1) Spackova invented an image preview system that tracks orientation changes of face that wears eyeglasses. The system also tracks orientation changes of a clothing;

    (2) The key part of Spackova technology are the indicia in the form of equilateral triangles (col. 3 lines 50-52; col. 4 line 5);

    (3) Each indicium is wear by a user on the face (col. 3 lines 50-52) or adhered to a segment of a cloth (col. 3, lines 4-9);

    (4) The equilateral triangle indicia may be of color not found on the face of or body of object for computer/digital image processor to easier access the colored triangle (col. 4, lines 51-56);

    (5) When the orientation of the face of the user, or the orientation of a cloth is changed like changing of posture, changing orientations of the corresponding indicia are recorded and converted into data. These data tells a computer/digital image processor the how the face orientation of the face or clothing is changed. The data then allows the computer/digital image processor to change orientation of eyeglasses wear by the face (changing from 61 to 62, then to 63 of Fig. 2A to 2C, please also read the corresponding description) or displaying different postures of the clothing (changing orientation of the different indicia segments,

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from 85, 86 to 85', 86', then to 85", 86" of FIG. 3., please also read the corresponding description).

Listed below are the recited characteristics of claim 40:

(1) defining m different physical dimensional parameters of a human body;

(2) measuring each of said m defined parameters a physical dimension of said body to produce m values;

(3) processing said m values to produce a multiple digits compressed BP code for representing said m values; and

(4) the formed BP code describes the physical dimensions of a human body.

The office action refer the "indicia segment" 72 of Spackova to be a "dimensional parameter". The specification refers the "dimensional parameter" to be a parameter of the human body that can be measured, such as shoulder width, arm length.... Inseam dimension (specification, page 4, lines 10-12 and page 18 lines 8-22). The "indicia segment" 72 of Spackova is a rectangular segment of a clothing which is imprinted with an indicium in the shape of an equilateral triangle and binary numbers 75 (col. 4, lines 4-9). When comparing the characteristics of Spackova and that of the claim 40, the following differences had been found:

(a) Step (1) of the subject application requires defining m different physical parameters of a "human body". Spackova's indicia segment is a rectangular portion of a "cloth". It is obvious that rectangular portion of a cloth cannot represent a dimensional parameter of a "human body". For examples, how can a human body be in the shape of the skirt 85, which is formed by the rectangular indicia segments. Therefore the disclosure of Spackova failed to meet the step (1) characteristic of claim 40.

(b) Step (1) further specifies m different physical dimensional parameters. Example provided in the embodiment of page 18, lines 8-22, five parameters are defined as "arm length", "neck diameter", "torso length", "waist diameter" and "leg length". Each of these dimensional parameters are of different nature as compared with each other. Spackova named all rectangular segments similarly as "indicia segments" which are of the same nature. Accordingly the same

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nature rectangular indicia segments failed to satisfy the term "different dimensional parameters".

(c) Step (2) of claim 40 recited a step to measure each dimensional parameter to provide a value, such as 35 inches for the parameter of waist diameter. Spackova's indicia segment is merely a rectangular segment of cloth which is imprinted with an equilateral triangle and a binary number. Spackova did not specify which part of the indicia segment is to be measured, the width, the height or the diagonal of the rectangle? The office action interprets the difference of viewed triangle and the base equilateral triangle during different posture is a measurement of a physical dimension of a body. If the statement of the office action is true, it means the physical dimension of a body will change during the operation of Spackova, according to different postures displayed. This is obvious to be not acceptable, against the common sense, and works against the application purpose of the subject invention. Accordingly this interpretation of the office action is respectfully requested to be withdrawn, unless the next office action is able to reasonably explain how can the varying parameters formed by different postures can be used to process a body code of steps (3) and (4).

(d) At the bottom of page 2, the office action refers to col. 4 lines 57 of Spackova that "the computer encodes for about 5-6 bits data related to the reference indicia" and that this reference is equivalent to the claimed step (3) – "processing said m values to produce a multiple digits compressed BP code". If col. 4 lines 56-61 are read carefully, Spackova clearly stated that the 5-6 bits represents the color of the indicia triangle and not the values of a dimensional measurement. Accordingly, the examiner is respectfully to further explain how can the color of a triangle can become a value of a measured dimensional parameter as claimed?

According to these results of factual comparison, the ground of rejection under 35 U.S.C. 103(a) according to Spackova in view of Runton is respectfully requested to be withdrawn.

In addition, it is respectfully submit that Runton also failed to disclose a technology to compress the physical parameters for providing the BP Code as claimed. Please refer to section (E) below for the study of the reference prior art Runton which is shared by the

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ground of rejection separately under Spackova (this section) and Jones of section (C) hereunder.

**(C) Claim 40 rejection under 35 U.S.C. 103(a) according to "Jones - Format for human body modeling" in view of Runton:**

The article of Jones provided by the examiner comprises of 7 pages. After carefully reviewing the article of Jones, the applicant noticed the following remarks:

    (a) On page 4, near the bottom, the article indicated the following:

        (equation omitted)  (1); and

        (equation omitted)  (2)

    (b) On page 5, at the end of third paragraph, the article indicated the following:

        (Figure 5 omitted)

From the above, it is reasonable to believe that the original article of Jones comprises two omitted equations and at least five omitted figures. Listed below is a quotation of MPEP 2141.02:

> *Ascertaining the differences between the prior art and the claims at issue requires interpreting the claim language, and considering both the invention and the prior art references **as a whole**.*

The applicant respectfully submit that it had been very difficult for the applicant to understand the nature of the control points "P sub i,j" quoted around the bottom of page 4 of Jones to explain the omitted equation (1) omitted. This is important as the office action, on page 3, second paragraph interpreted "P sub i.j" control points of Jones as the "m different physical dimensional parameters of said body" claimed. Without a complete copy of Jones, it is impossible for the applicant to understand how the "P sub i.j" control points of Jones is measured, interpolated and the nature of result generated by the interpolation of "P sub i,j" control points.

The applicant is not sure if the examination process was based on an incomplete copy (omitting the equations and figures) of the Jones publication, similar to the one that the applicant received? If so, how can a ground of rejection based on 35 103 (a) be concluded without reviewing the cited prior art Jones "as a whole" as required by MPEP 2141.02?

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With this response, the examiner is respectfully requested to provide the **COMPLETE** copy of the cited Jones prior art that provide all the omitted equations and figures. If the completed copy of the Jones prior art is not available, the ground of rejection under 35 U.S.C. 103(a) according to Jones (publication) in view of Runton is respectfully requested to be withdrawn, according to MPEP 2141.02.

**(D) Claim 40, 1, 6-18, 49 rejection under 35 U.S.C. 103(a) according to Spackova in view of Powell:**

Claims 1, 6-18, 49 depend on independent claim 40. First of all, please refer to the discussion of section (B) above. This section proved that prior art Spackova failed to disclose the steps (1) and (2) characteristics of the claim 40.

Secondly, in page 4, top paragraph, the office action indicated that "Powell does disclosed the use of compressed (in packets) n1 and n2 independent digits to segregate data and further discloses cross correlation of the network addressing code col. 9, lines 13 et seq. to define the nature or relationship between data bit packets." Listed below is the quotation of col. 9, lines 7-17, including line 13 quoted by the office action:

> As shown in FIG. 2, computer 238 sends a packet to computer 272, via computers 250, 254, 258, and 260.
>
> In other words, each packet is essentially a type of signal having a network address of a certain length and having a certain number of digits. A signal on one network may include a first network address O1 digits removed from the start of the signal. A signal another network may include a second network address is O2 digits removed from the start of the signal, wherein O1 is not equal to O2, and the first network address includes N1 digits and the second network includes N2 digits, wherein N1 is not equal to N2.

The applicant carefully studied the 35 pages disclosure of Powell but failed to find the following features quoted by the office action:

(a) Powell failed to disclose the compressed feature of body profile code. The term "packet" recited by the office action is merely a stream of data as understood by a person having ordinary skill in the art. Powell did not disclose that the packet comprises compressed data.

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(b) Powell precisely recited in col. 9, lines 7-17 that the N1 digits are for a first
network address and that N2 digits are for a second network address. Powell
gave example of first network address 3011 in the packet 3002 of Fig. 3A, a
different second network address 3013 in the packet 3004 of Fig. 3B and another
different third network address 3015 in the packet 3006 of Fig. 3C. Since Powell
precisely disclosed packets each specified a different network address, the N1
and N2 digits of different network addresses located on different packets
obviously failed to satisfy the requirement for providing the N1 and N2 digits on
the "same" BP code as claimed in claims 6-12, 15-18 and 49.

(c) The office action merely explains how Powell disclosed the N1 and N2 digits of
claims 6-12, 15-18 and 49. With repeated requests submitted in the responses
dated 05/17/2006 (page 4, 2nd paragraph) and 12/18/2006 (also page 4, 2nd
paragraph), **the office action failed to explain how Powell reads on
independent claim 40**, for a rejection of claim 40 under 35 U.S.C. 103(a)
according to Spackova in view of Powell to be justified. 37 C.F.R. 1.104(b)
requires an office action to be complete in order for the applicant to fully
understand each ground of rejection, so as to provide a proper response. The
applicant once again, respectfully requests the examiner to provide reasoning
how Powell reads on the limitations of claim 40. The next office action is also
respectfully requested not to set final, so as to give the applicant a chance to
response to this ground of rejection.

(d) In second paragraph, page 4, the office action indicated that:

> "what n1 and n2 data strings do is a function of design and is not
> a patentable feature e.g. size chart for fitting purpose, enhance
> resolution, physical dimensional parameter, non-dimensional
> related information related to said human-body, out of range
> information of a parameter, quantization linearity of at least one of
> said parameters, an offset value to be processed with a size chart,
> the geographical origin of said BP Code, and a decoding process."

The office action further indicated at the bottom of page 4 that:

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> "recitation of for recommending a size indicated by said size chart
> is deemed a mere application of the data which is not deemed
> patentable."

If these ground of rejection are maintained, the examiner is respectfully requests to explain:

(i)  Which part of patent law indicated that the above mentioned BP Code system improvements are not patentable features;

(II) Even if any of the above features are determined to be non patentable, which part of the patent law indicated that non-patentable features are to be rejected under 35 U.S.C. 103(a)? To the understanding of the applicant, only 35 U.S.C. 101 provide guideline for rejection due to non-patentable features. Proper ground of rejection is important as response for rejections under 35 U.S.C. 103(a) and 35 U.S.C. 101 are governed by different guidelines and different precedent cases.

Listed below are the reasons that supports the patentability of the above features:

Modifying the invented BP Code system to work with existing size charts in the market enable the BP Code system to readily interface with existing methods for users to buy clothing. Since this improvement adds value to the invented system, it is a patentable feature according to patent law. All the other quoted features improve the servicing functions of the fundamental BP Code system. Patent law encourages improvements of functional systems and therefore they are patentable features.

(e) Claim 49 recited a BP Code having a first compressed n1 digits code and a second supplemental n2 digits code. Bottom paragraph, page 4 of the office action indicated that if the length of a data string (the BP Code obtained after the compression process) is too long, then it would be obvious to carry it over to the n2 digits. This interpretation will not work for the current invention because if the compressed BP Code is cut into two parts, the first part fail to satisfy the functional requirement of a compressed code as claimed in claim 49. It means the missing bits first part is an incomplete code that cannot be claimed as a

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compressed code. The Incomplete compressed code also cannot be decompressed to provide the original parameter. The only functional method to form the structure of the BP code claimed In claim 49 is to add a supplemental code to the compressed code of Independent claim 40. Embodiments claimed In claims 6-12, 16-18 provides Improved characteristics of the supplemental code.

**(E) Technology disclosed by Runton:**

Runton Is a cited prior art to support the rejection of claim 40 under 35 U.S.C. 103(a) as anticipated by Spackova, and then by Jones (the published article) separately. The office action cited Runton to disclose the compression features not disclosed by Spackova or Jones. It is therefore Important to evaluate if the disclosure of Runton, as a whole can be combined with the Interpreted dimensional parameters of Spackova or Jones.

MPEP 2141.02 quoted In section (C) above requires a prior art to be considered as a whole. Runton disclosed a process to compress digitized audio signals. Listed below are the characteristics of Runton's disclosure as a whole:

(1) The motive of Runton was to compress audio files is to reduce music data stored on music CD, so as to easily send the compressed data over the Internet or to easily store music data on computer hard drives (one tenth of original file size, occupy less capacity, col. 1 lines 36-39).

(2) Runton expressed acknowledged that compression/decompression of audio signal suffers from significant data loss (col. 1, lines 30-60).

(3) Runton reduce the data loss by providing new and Improved apparatus/software for restoring decompressed data to substantially it original content (col. 1, lines 65-67).

(4) The method provided by Runton to enhance compressed/decompressed audio signal to substantially it's original value Is by providing a harmonic enhancer, digital warmth adder and a digital frequency equalizer to process the decompress audio signal (col. 2 lines 20-31, also FIGURE 1).

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When Runton is considered as a whole, the compression process of Runton does not teach the subject compression process of BP Code because:

(a) Listed below is a quotation of precedent court ruling *In re Kahn, 441 F.3d 977, 986, 78 USPQ2d 1329, 1335 (Fed. Cir. 2006)*

*Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so.*

The motive of Runton is to reduce large amount of music file data so that it can be stored on CD, computer hard drives, or feasible to be distributed through the internet. Actual data values of all body profile parameters when in uncompressed form are usually less than 40 bits binary. The compressed BP code is usually less than 6 bits hex. This data length is insignificant for storage on a CD ROM (760M X 8 = 6.08 Giga bits), hard drive (60G X 8 = 480Giga bits) or to be transmitted over the internet (56k bits/ sec or faster). Accordingly the motive of Runton to compress music files does not apply to motivate the invention of BP Code. The motive to invent BP Code, for a user to record a few letters that can be recovered to provide full body dimensions of a human body is not taught by the prior art Runton. According Runton lacks the motive to teach compressing body profile parameters for a person, so as to justifying a rejection under 35 U.S.C. 103(a).

(b) Listed below is a quotation of precedent court ruling *In re Gordon, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)*

*If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification.*

Runton expressly disclosed that audio compression will introduce significant loss to the original audio signal. According the compression of Runton actually teaches away from the requirements of BP Code, or even the application of reference prior art Spackova and James, where any lost of data is intolerable.

Runton further disclosed the use of harmonic enhancer, digital warmth adder and digital frequency equalizer as key components to process the decompress audio signal, so as for it to regain the quality of the original audio. When Runton is

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considered as a whole, as required by MPEP 2141.02 stated above, the improvement means of Runton of FIGURE 2 and 3 should be applied to enhance the signal quality of the decompressed parametric data of Spackova, Jones, or the subject BP Code data. Obviously applying such kind of analog signal shaping devices will significantly damage the data content of the decompressed data of Spackova, Jones or the BP Code. According the compression and decompression of Runton as a whole actually teaches away from the working principle of the subject application as well as the primary cited prior arts Spackova and Jones.

Since evidence that Runton when considered as a whole, lacks motivation, and actually teaches away from the principle of operation of the subject application, rejection under 35 U.S.C. based on Runton as indicated in sections (B) and (C) above is respectfully requested to be withdrawn.

**(F) Substantial similar version of claim 40 is already allowed and issued in US Patent 7,194,327.**

Hereby the examiner is respectfully notified that the sister patent application 10/193,838 claiming features of the BP Code system is already allowed and issued as US Patent 7,194,327 on 03/20/2007. Listed below is claim 1 of the issued 7,194,327:

1.  *A method of producing a body profile (BP) code to describe the physical dimensions of a human and/or garment body, said method including:*
    *defining m different physical dimensional parameters of a body;*
    *measuring for each of said m defined parameters a physical dimension of said body to respectively produce m values;*
    *and processing said m values to produce said BP code comprising a compressed multidigit code representing said m values.*

Although the wording are not exactly identical, claim 1 of US Patent 7,194,327 is very close to that of the main independent claim 40 of the subject application. Accordingly the applicant has two requests:

(a) To allow the subject application as a substantially close version of the main independent claim of the subject application is already allowed and issued in a US patent. The fundamental point here is that all the cited prior arts Spackova, Jones, Powell and Runton as a FACT, lack the teaching of the claimed BP Code invention to justify a 35 U.S.C. 103(a) rejection as discussed above.

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(b) Since the main claims of the subject application is very close to that of claim 1 of the 7,194,327 patent, the examiner is respectfully requested to provide official comment if "double patenting" may had occured?

(c) The examiner is respectfully notified that the subject application and US Patent 7,194,327 claimed the priority dates of the same provisional patent applications, and therefore carries the same priority date. Accordingly the applicant respectfully requests the professional recommendation from the examiner if a terminal disclaimer is required to avoid "double patenting" if this is an issue to be resolved?

[End of Remark]

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